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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/940,565  | 08/28/2001  | Dirk Lenz            | Beiersdorf 738-KGB  | 5014             |
| 27384   | 7590        | 06/17/2005           | EXAMINER            |                  |
| NORRIS, MCLAUGHLIN & MARCUS, PA<br>875 THIRD STREET<br>18TH FLOOR<br>NEW YORK, NY 10022 |             |                      | SALVATORE, LYNDIA   |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 1771                |                  |

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/940,565

Applicant(s)

LENZ, DIRK

Examiner

Lynda M Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-6 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Applicant's petition for revival, request for continuing examination (RCE), and accompanying remarks filed 02/01/05 have been fully considered and entered.

#### ***Response to Arguments***

2. Applicant's arguments with respect to the obviousness type rejections of claims 1,3-6 and 8-10 set forth in section 4 of the Final Office Action have been considered but are moot in view of the new ground(s) of rejection. Specifically, Applicant argues that the primary reference of Gessner et al., fails to staple fibers of polypropylene and the Examiner failed to cite a reference evidencing that employing polypropylene would be obvious to one having ordinary skill in the art. As such, a new ground of rejection of claims 1,3-6 and 8-10 is set forth herein below.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1,8 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Newkirk et al., US 6,417,121.

The patent issued to Newkirk et al., teaches laminate composite comprising a spunbond nonwoven laminated to a carded nonwoven web of staple fibers (Column 5, 60-Column 6, 25).Newkirk teaches forming the spunbond non-woven with bicomponent

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fibers comprising polypropylene blends (Column 8, 15-29). Suitable carded staple fiber webs include those comprising polypropylene staple fibers (Column 16, 30-37). The composite fabric is suitable for use in a variety of disposable applications including medical and other protective clothing (Column 4, 65-Column 5, 5). Newkirk et al., specifically teaches laminating a film to the spunbond non-woven fabric (Column 14, 30-38). Suitable films include breathable and non-breathable films. With specific regard to the limitation of providing a perforated film, breathable films are inherently microporous such that they allow the passage of water vapor (Column 14, 39-58).

With regard to the limitation to a wound dressing and/or compress, it is the position of the Examiner that said limitations constitute intended use not germane to the final product structure and as such are not given patentable weight at this time. Since the prior meets all of the structural and chemical limitations presently set forth there is nothing on record to evidence that the disposable article taught by Newkirk et al., could not function in the desired capacity of a wound dressing and/or compress. The burden shifts to Applicant to prove otherwise.

With regard to the ultrasonic bonding limitation, it is the position of the Examiner that said limitation constitutes a method limitation not germane to the final product. The presence of process limitations on product claims, in which the product does not otherwise patentably distinguish over the prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656

In the instant case, Newkirk et al., teaches joining the spunbond non-woven layer to the carded staple fiber layer by adhesive, spot, point, calendaring or through-air-bonding (Column 13, 60-Column 14, 9). Thus, the Examiner submits that the claimed

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product appears to be the same or similar to that of the prior art, although produced by a different process. Consequently, the burden shifts to Applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289,292

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newkirk et al., US 6,417,121.

Newkirk et al., teaches a film formed from ~~polyethylene~~ <sup>polyethylene</sup> but fails to teach a film formed from ~~polyethylene~~ <sup>propylene</sup>. However, It would have been obvious to the skilled artisan to utilize polypropylene in place of polyethylene. The skilled artisan would recognize that ~~polyethylene~~ <sup>propylene</sup> is a functionally equivalent polymer of polyethylene. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416

7. Claims 1, 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gessner et al., US 5,997,989 in view of Newkirk et al., US 6,417,121.

As previously set forth, the patent issued to Gessner et al., teaches a wound dressing (column 11, lines 16-17) comprising an outer polypropylene spunbond layer and a staple fiber nonwoven (abstract, Column 7, 24-30, and Column 8, line 26). The layers are bonded together by ultrasonic welding (Column 9, lines 56-58). Gessner et al., teaches doping with surface-active agents (col. 9, lines 35-36).

With regard to claims 3 Gessner et al., is silent with respect to the basis weights of the fabrics. However, it is the position of the Examiner that it would have been obvious to a person having ordinary skill in the art to form the layers with the claimed basis weight ranges as a function of desired end use. In the instant case, since Gessner et al., specifically teaches forming a wound dressing. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233

With respect to claim 4, Gessner et al., teaches that there may be more than two plies (column 4, line 4 and col. 8, lines 57-58), but fails to explicitly teach five plies of staple fibers. Based on Gessner's et al., suggestion to use more than two plies, it would have been obvious to a person having ordinary skill in the art to utilize five plies of the staple fiber fabric. Such a modification would have been motivated by the desire to increase the absorbent capacity of the bandage.

With respect to claim 6, Gessner et al., teaches adding additional fibers to the spunbond layer (column 8, lines 10-15). Gessner teaches adding polyamide fibers, but does not specifically teach the addition of high strength polyamide fibers, such as aramid. It would have been obvious to a person having ordinary skill in the art to utilize aramid fibers as the polyamide addition taught by Gessner et al. Such a modification would have been motivated by the desire to increase the strength, integrity and durability of the fabric.

The patent issued to Gessner et al., fails to explicitly teach a staple fiber non-woven comprising polypropylene, however, it is the position of the Examiner that it is commonly known in the art to form staple fibers from various polyolefin materials such

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as polypropylene. For example, the patent issued to Newkirk et al., teaches laminate composite comprising a spunbond nonwoven laminated to a carded nonwoven web of staple fibers (Column 5, 60-Column 6, 25). Suitable carded staple fiber webs include those comprising polypropylene staple fibers (Column 16, 30-37). The composite fabric is suitable for use in a variety of disposable applications (Column 4, 65-Column 5, 5).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the staple fiber layer in the wound dressing bandage taught by Gessner et al., with carded polypropylene staple fiber layer taught by Newkirk et al. Specific motivation to employ polypropylene staple fibers is based on the fact that polyolefinic materials such as polypropylene are commonly used in the manufacture of laminates which are utilized in disposable articles.

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*Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1482. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 15, 2005  
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